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Supreme Court of the United States

October Term, 1957

No. 539

UNITED STATES OVERSEAS AIRLINES, INC., RALPH W. E. COX, JR., R. W. E. COX, LETITIA COX, co-partners doing business as Ocean Air Tradeways; and RALPH COX, JR., LETITIA H. COX, REBEKAH L. McSWEENEY and ANDREW L. COX, a partnership, doing business under the firm name and style of OCEAN AIR TRADEWAYS,

Petitioners,

against

COMPANIA AEREA VIAJES EXPRESOS DE VENEZUELA, S. A., AEROVIAS VENEZUELA EUROPA and JORGE MARCANO,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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COMPANIA AEREA VIAJES EXPRESOS DE VENEZUELA, S. A., AEROVIAS VENEZUELA EUROPA and JORGE MARCANO,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioners pray that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Second Circuit entered on August 6, 1957, which affirmed the judgment of the District Court for the Southern District of New York entered on September 17, 1956, granting respondents a recovery of $153,234.53, plus interest and costs on their counterclaim against petitioners for breach of contract.

Opinions Below

The opinion of the Court of Appeals has been officially reported in 246 F. 2d 951. The opinion of the District Court has not been officially reported but is set out at App. Appdx.[1] 26-33.

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[1]The term "App. Appdx." as used throughout refers to the Appellants' Appendix as printed for the use of the court below.

Jurisdiction

The judgment of the Court of Appeals was entered on August 6, 1957. The jurisdiction of this Court is invoked under Title 28, U. S. C., Section 1254.

Questions Presented

1. Where the outcome of litigation hinges upon expert testimony as to a disputed issue of foreign law, was a substantial restriction of petitioners' cross-examination of respondents' expert, whose testimony was adopted *in toto* by the trial court a denial of petitioners' right to a fair trial?

2. Did the Court of Appeals for the Second Circuit err in its holding that the "trial court's limitation on cross-examination was not prejudicial"?

Constitutional Provision Involved

The constitutional provision involved is the Fifth Amendment to the Constitution of the United States of America which provides: "No person shall be • • • deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Statement of the Case

Petitioners are United States Overseas Airlines, Inc. (USOA), an American non-scheduled air carrier, and certain individuals doing business as a partnership named Ocean Air Tradeways (OAT).

On July 25, 1951, a contract was entered into between USOA and respondent Compania Aerea Viajes Expresos (CAVE), a Venezuelan air carrier which held franchises from the Venezuelan Government to engage in domestic air

transportation within Venezuela and international air transportation between Venezuela and certain points in Europe.[2]

Under this contract, which was to run for a period of one year, CAVE permitted USOA the exclusive use of its international franchise in consideration for certain payments by USOA. The contract was drafted by representatives of CAVE and gave USOA the exclusive right to conduct and control all air transportation operations over CAVE's international route. USOA was made responsible for conducting all flight operations, maintenance and traffic functions; providing all necessary personnel and establishing and maintaining maintenance bases and facilities; paying all costs, both direct and indirect; furnishing aircraft suitable for operations; establishing flight schedules and frequencies consistent with economically feasible traffic requirements; abiding by all applicable laws and government regulations; and otherwise conducting the operation at all times in such manner as to reflect credit upon the Venezuelan Flag. USOA was to receive all revenue but was obligated to pay CAVE certain stated sums plus a percentage of gross receipts over a specified minimum.

CAVE's international franchise[3] provided that all service personnel, 75% of administrative personnel and 50% of technical personnel were required to be Venezuelan citizens unless those percentages were reduced by the Federal Executive Power. The franchise further provided that CAVE might transfer and assign its rights and obligations under the franchise only to a Venezuelan corporation, the directors, capital and stockholders of which were to be "all Venezuelan in their majority of at least 55%"

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[2] Respondents' Exhibit "N," Appendix A, *infra*, at pp. 13-19. Respondent Marcano is the President and principal stockholder of CAVE.

[3] Respondents' Exhibit "BJ," Appendix B, *infra*, at pp. 20-24.

and that in no event should foreign companies or foreign governments participate in the enterprise.

Article 107 of the Venezuelan Constitution in effect on July 21, 1951 (App. Appdx. 490-2) provided:

> "No contract involving the national, state or municipal public welfare [interest] shall be made with foreign governments nor may such a contract be transferred in whole or in part to any foreign government, nor shall any contract be made with companies which are not domiciled in Venezuela, nor may there be transferred to such companies any contracts made with third parties."[4]

Shortly after USOA commenced flight operations, it discovered that traffic availability was not in accordance with representations made by CAVE's representatives prior to the execution of the agreement. Flight operations were not only economically unfeasible but were hampered by CAVE's failure to comply with obligations it had undertaken to perform under the contract. On the basis of these facts, petitioners commenced an action for recission. Respondents counterclaimed for breach of contract. Petitioners also alleged that the agreement was illegal and unenforceable both in its execution and performance under Venezuelan law, *i.e.*, it was in violation of (a) the international franchise and (b) the specific restrictions of the Venezuelan Constitution.

On trial, each of the parties introduced the testimony of an expert witness as to Venezuelan law. Petitioners' expert testified in substance that there were numerous and specified conflicts between the terms of the franchise and the provisions of the agreement between the parties (App. Appdx. 276-7, 282-3, 284-5). Petitioners' expert further testified that the agreement between the parties was invested with a *public interest* and thus in direct violation

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[4] It is not disputed that the franchise was endowed with the "public interest" (App. Appdx. 424, 491-2).

of the Venezuelan Constitution.[5] USOA was a company not domiciled in Venezuela, and since the Venezuelan Government could not directly contract with it when the subject matter involved the "public interest," the provisions of the Constitution could not be circumvented by permitting CAVE to transfer rights and obligations granted it by the Venezuelan Government.

CAVE introduced into evidence copies of letters in which it purportedly advised the Venezuelan Government of the provisions of its agreement with USOA and a letter written by the Venezuelan Minister of Communications to the Minister of Foreign Relations renewing its international franchise for a period of one year subsequent to July 30, 1951. Then respondents' expert testified that the agreement did not transfer any of CAVE's rights and obligations to USOA; that the agreement was neither in violation of CAVE's international functions or the Venezuelan Constitution (App. Appdx. 409-412, 421-426). The scope of cross-examination of respondents' expert witness was substantially curtailed by the trial court in sustaining numerous objections to questions asked by petitioners' counsel, the trial court effectively precluding the cross-examination of respondents' expert by a general ruling that "in the realm of expert opinion of foreign law the best you can do is to establish your expert's opinion, the other side has established its opinion, and it is a matter for the trier of the fact to decide which opinion it is going to take." (App. Appdx. 419.)

The trial court adopted in full the testimony of respondents' expert and relied solely upon that testimony in reaching all of its findings of fact as to the Venezuelan

[5] He also testified that the franchise, being one of "public interest," is not lawful and effective until approved by the Federal Executive Council of Ministers, communicated to the Congress, and the notice of granting is published in the Official Gazette (App. Appdx. 258, 264-265, 271-272, 273).

law and the effect of that law upon the legality of the agreement between the parties.[6] Having found the Venezuelan law to be precisely as stated by respondents' expert witness, the trial court concluded as a matter of law that plaintiffs had failed to sustain the burden of proving that the agreement was illegal or void (App. Appdx. 23).

Respondents were awarded judgment on their counterclaim against petitioners in the sum of $153,234.53 with interest from the 15th day of September, 1951, plus costs. When the question of the curtailment of petitioners' cross-examination of respondents' expert was presented to the Court of Appeals, that court held that the trial court's limitation of cross-examination was not prejudicial.

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[6] Findings of Fact: "62. The renewal of the franchise by the Federal Executive of Venezuela after receiving from CAVE the letters (1457) dated July 30, 1951 and August 14, 1951 and the oral information from Marcano, was a practical construction that the franchise and the law of Venezuela did not prohibit CAVE from making the agreement with plaintiffs dated July 25, 1951 and did not prohibit the acquisition by plaintiffs of CAVE's stock (Testimony of Tenorio)." App. Appdx. 17.

"63. Under Venezuelan law the agreement of July 25, 1951 did not accomplish a transfer of the rights and obligations of CAVE under the franchise (Testimony of Tenorio)." App. Appdx. 17.

"64. Under Venezuelan law the significant criterion in determining whether a transfer of rights and obligations under the franchise was made is whether control of the franchise rights was taken from CAVE, and the agreement between plaintiffs and CAVE dated July 25, 1951 keeps control in CAVE of 'matters of policy and questions of major concern,' and also reserves to CAVE control not only of 'hiring' and 'termination' of 'all personnel' but also the 'management' of 'all personnel' (Testimony of Tenorio)." App. Appdx. 17-18.

"66. Under Venezuelan law and the franchise USOA was not prohibited from acquiring stock in CAVE (Testimony of Tenorio)." App. Appdx. 18.

Reasons for Granting the Writ

The issues which this Court is asked to decide arise from the trial court's substantial restriction of petitioners' cross-examination of respondents' foreign-law expert and the determination by the court below that such restriction was not "prejudicial." We think the determination below was in conflict with the applicable decisions of this Court, in apparent conflict with the determination of other circuits on this issue, and that in the case at bar there is an important question of federal law which has not been, but should be, resolved by this Court.

I

The court below has decided an important question of federal law which has not been but should be settled by this Court.

To our knowledge, this Court has never authoritatively determined the nature and scope of permissible cross-examination of an expert witness as to a disputed issue of foreign law.

Petitioners are not unmindful of the existence of the so-called "Federal rule" regulating the permissible scope of cross-examination, and of its operationally limiting effect.[7] But regardless of how rigidly this rule may be applied in the discretion of a particular trial judge, it is axiomatic that

> "• • • it is only after a party has had an opportunity substantially to exercise the right of cross-examination that discretion [of the trial judge] becomes operative." *Lindsey* v. *United States* (C. A. D. C.), 133 F. 2d 368-369.

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[7] This "rule" has been roundly criticized. Wigmore on Evidence (3d Ed., 1940), §§ 1885 *et seq.*

Notwithstanding the foregoing, the "Federal rule" excepts from its application cross-examination of expert witnesses, and in such cases the cross-examiner is permitted wide latitude. See, *Carter Products* v. *Federal Trade Commission* (9 Cir.), 201 F. 2d 446, 452, vacated on other grounds, 346 U. S. 327.[8]

Petitioners contended before the trial court that the contract in suit was void *ab initio; i.e.*, it violated both the Constitution of the United States of Venezuela and the terms of the operating franchise which had been issued by the Venezuelan Government. This contention brought into issue a question of foreign law, and petitioners introduced expert testimony demonstrating that the contract illegally transferred rights and obligations of the franchise holder to a foreign corporation; hence the contract was void. On the other hand, in an attempt to offset petitioners' proof of the foreign law and to prove the foreign law applicable to their counterclaim, respondents introduced the testimony of an expert witness to the effect that the contract did not transfer the rights and obligations under the franchise and was therefore valid.

Despite the fact that the resolution of this disputed issue of foreign law went to the heart of respondents' counterclaim, the trial judge frustrated and prevented petitioners from exploring significant areas of cross-examination with respect to respondents' expert witness. The trial court's rationale for its curtailment of cross-examination was:

> "That where you are in the realm of expert opinion of foreign law the best you can do is to establish your own expert's opinion, the other side has established its opinion, and it is a matter for the frier of the fact to decide which opinion it is going to take." (App. Appdx. 419.)

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[8] See also: *Coca Cola* v. *Moore*, 246 Fed. 942 (8 Cir.); 37 Col. L. Rev. 1373, 1378, n. 33 (1937).

Having made its ruling and eliminated any possibility of discrediting the testimony of respondents' expert by cross-examination, the trial court concluded that petitioners had failed to sustain their burden of proving that the agreement was illegal and void, and made findings of fact which were based solely and expressly on the testimony of respondents' expert.[9]

Although the Court of Appeals stated that detailed disposition of the many issues raised on appeal did not seem of wide public interest to others than the immediate litigants, we think it clear that the permissible scope of cross-examination of respondents' expert was an important issue of federal law which should be resolved by this Court. This is the day of the expert. More and more litigation is concerned with technical questions susceptible of proof only through the use of experts. A mass of litigation turns entirely on the testimony of physicians, engineers, scientists and experts on foreign law.[10] In certain fields, *e.g.*, patent litigation, evidentiary presentations have been almost entirely abandoned to the expert. This ever-increasing dependency upon the expert witness has alarmed legal scholars[11] and has resulted in numerous proposals for reform.[12] For example, Professor Nussbaum, in a recent article in the Columbia Law Review, points out:

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[9] *Op. cit., supra,* ftn. 6.

[10] 9 *Unif. Laws Anno.* 428. In 1937 the National Commissioners on Uniform Laws estimated that the use of expert evidence had become an important and often controlling factor in 60% of important litigated business. The percentage today is undoubtedly higher.

[11] Wigmore on Evidence (3d Ed., 1940), § 563, p. 645, ftn. 2; 1936 *Reports, etc., New York Law Revision Commission,* p. 823, ftn. 107; XXXII Amer. Law Rev. 851 (1898); Learned Hand, Vol. 3, *N. Y. City Bar Ass'n. Lectures,* 89, 103-104 (1921); Learned Hand, 15 Harv. L. Rev. 40 (1902).

[12] 9 *Unif. Laws Anno.* 427 *et. seq.*; 1936 *Reports, etc., New York Law Revision Commission,* pp. 871-910 (Appendix thereto); Wigmore, *op. cit.* n. 11, *supra,* p. 650; 1938 *Report, ABA Comm. on Improvement of Law of Evidence.*

> "The unfavorable influence of a litigant's payment upon the expert's objectivity also constitutes the main argument of this general movement. In the case of an expert on foreign law * * * the need for a reform is even more urgent." [13]

Under these circumstances, it seems basic that expert witnesses should be subject to the broadest cross-examination possible. Yet in the case at bar, and in that area where cross-examination was most important, it was curtailed by the trial court. This Court has not yet defined the permissible scope of such cross-examination for the guidance of bench and bar. We believe that where the outcome of litigation hinges upon expert testimony as to a disputed issue of foreign law, the permissible scope of cross-examination of the expert witness raises an important issue of federal law, which has not been, but should be, resolved by this Court.

II

The court below has decided a question of federal law in a way in conflict with applicable decisions of this Court.

Despite the fact that the trial judge seriously interfered with and effectively curtailed cross-examination of respondents' expert, the Court of Appeals for the Second Circuit apparently determined that such curtailment of cross-examination was not prejudicial to petitioners' case.[14] Nevertheless, in *Alford* v. *United States*, 282 U. S. 687, this Court pointed out that:

> "Counsel often cannot know in advance what pertinent facts may be elicited on cross-examination. For that reason it is necessarily exploratory; and the rule that the examiner must indicate the purpose of

[13] 57 Col. L. Rev. 341, 351 (1957).

[14] 246 F. 2d 951.

> his inquiry does not in general apply. * * * It is the essence of a fair trial that reasonable latitude be given the cross-examiner, even though he is unable to state to the court what facts a reasonable cross-examination might develop. Prejudice ensues from a denial of the opportunity to place the witness in his proper setting and put the weight of his testimony and his credibility to a test, without which the jury cannot fairly appraise them. * * * To say that prejudice can be established only by showing that the cross-examination, if pursued, would necessarily have brought out facts tending to discredit the testimony in chief, is to deny a substantial right and withdraw one of the safeguards essential to a fair trial." *Id.* at p. 692.

In the case at bar, respondents' counterclaim hinged upon the validity of the contract under Venezuelan law. The trial court's determination was based directly upon its total acceptance of the testimony of respondents' sole expert on the foreign law.

Clearly, where the outcome of the litigation is so obviously based upon the testimony of one witness, his credibility is a matter for the closest scrutiny and the scope of permissible cross-examination becomes an essential element in evaluating whether the parties were accorded a fair trial. Cf. *Gordon* v. *United States*, 344 U. S. 414, 417. In *Carter Products* v. *Federal Trade Commission* (9 Cir.), 201 F. 2d 446, vacated on other grounds, 346 U. S. 327, the Court pointed out:

> "More especially in the case of expert witnesses, cross-examination is of necessity exploratory and should be given broad latitude. Neither counsel nor the judge can know in advance what chinks may be disclosed in the armor of the expert or what frailties revealed in his premises." *Id.*, at p. 452.

Once the trial court had made its general ruling and had limited the scope of further cross-examination of respondents' expert, petitioners were effectively barred from ex-

ploring the credibility of that witness through cross-examination. Yet it was the testimony of that witness which the trial court relied on in making its determination awarding judgment to respondents on their counterclaim.

Accordingly, we think it clear (1) that the court below has decided a question of federal law in a way in conflict with the applicable decisions of this Court (see, *e.g.*, *Alford* v. *United States*, 282 U. S. 687) and (2) that the determination of the court below was in apparent conflict with the rulings of the Ninth Circuit in *Carter Products* v. *Federal Trade Commission*, 201 F. 2d 446, 452, 454 and *Fisher* v. *United States*, 231 F. 2d 99, 105, and further in apparent conflict with the ruling of the Third Circuit in *United States* v. *Augustine*, 189 F. 2d 587, 590-591.

CONCLUSION

By reason of the foregoing, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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DICKSTEIN, SHAPIRO & FRIEDMAN,
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of Counsel.

Appendix A

AGREEMENT, entered into as of the 25th day of July 1951 at Washington, District of Columbia, between Compania Aerea Viajes Expresos de Venezuela, S. A., having its principal place of business at Edificio Paris, Plaza Candelaria, Caracas, Venezuela (hereinafter called "CAVE"), and United States Overseas Airlines, Inc., having its principal place of business at Cape May County Airport, Wildwood, New Jersey (hereinafter called "Overseas").

CAVE is the holder of an open-end franchise granted by the Venezuelan Government to engage in air transportation between Venezuela and points in Europe. Until May 1951 passenger, property and mail operations were conducted over the route Caracas-Bermuda-Santa Maria-Lisbon-Madrid-Paris-Rome. These operations were temporarily suspended by CAVE in order that it might accept a desirable offer for the purchase of its aircraft. The objective of this agreement is to reestablish this service as hereinafter set forth.

Overseas currently operates under regulations of the Civil Aeronautics Board pertaining to so-called "Irregular Air Carriers". Among other equipment it owns, free and clear encumbrances, five DC-4 type aircraft suitable for the operation of the route here concerned. By letter proposal dated 19 July 1951 Overseas represented that it desired to enter into an agreement whereby it would immediately furnish two DC-4 aircraft and all personnel, equipment and facilities necessary to the conduct of such flight operations, maintenance and traffic, including ticketing and reservations.

In consideration of the mutual covenants existing between CAVE and Overseas, and the further considerations hereinafter specifically set forth, it is agreed as follows:

1) Overseas shall conduct all flight operations and maintenance and traffic functions, including ticketing and reservations, and accordingly shall:

A) Furnish, under terms and conditions legally permitting Venezuelan registry, two DC-4 aircraft suitable in all respects for the operation concerned. The Venezuelan Flag and CAVE markings shall be featured.

B) Immediately replace any aircraft to be removed from or otherwise not available for service for an appreciable time with an equally suitable aircraft.

C) Provide all necessary personnel.

D) Establish and maintain adequate maintenance bases and facilities. This may be accomplished directly or through contracts with existing services. The determination of locations for the conduct of maintenance and the provision of spare parts and engines shall be exclusively within the judgment of Overseas.

E) Conduct such program to train Venezuelan personnel as may be required by Venezuelan law. It is assumed that American crews may be used for at least the first year.

F) Pay to CAVE $1,500 per round trip flown. Trips covering only a part of the total route and off-route trips shall be at the rate of 12.233 cents per aircraft mile. Beginning 60 days from the date hereof, i.e., 23 September 1951, Overseas shall pay CAVE a minimum guarantee of $3,000 per week. Overseas shall exercise every reasonable and economically feasible effort to institute two round trips per week before the expiration of said 60 days. Payment shall be made at the end of each calendar month.

G) Pay promptly all costs both direct and indirect. Among others these will include operating, traffic, maintenance, taxes, commissions, employment reserves, promotional, accounting and administrative expenses. The President of CAVE shall be reimbursed by Overseas for actual business expenses and, subject to the attainment of an average annual load factor of not less than 50 percent,

shall also receive an annual salary of $15,000 per year. No other officer of CAVE shall be paid by Overseas unless so agreed in writing. Attorney fees to be included shall be limited to those applicable to the operation here concerned. It is estimated that these may equal approximately $20,000 per year.

H) Pay to CAVE 50 percent of all gross revenues in excess of $2.25 per revenue aircraft mile averaged over periods of three consecutive months. All such revenues up to and including $2.25 per revenue aircraft mile to be retained by Overseas.

I) Grant to CAVE an option to purchase those DC-4 aircraft used in the operation for a total price of $500,000 each, such option to be exercisable only if Overseas decides to discontinue its participation in such operations as defined in this agreement. J. M. R. C. Jr.

J) Establish flight schedules and frequencies consistent with traffic requirements. It is assumed that this will initially involve two round trips per week.

K) Abide by all applicable laws and government regulations and otherwise conduct the operation at all times in such manner as to reflect credit on the Venezuelan Flag.

2) CAVE shall:

A) Grant to Overseas a one year option to buy 25 percent of the total authorized outstanding stock of CAVE. The purchase price shall be $1,500 per share. As there are a total of 600 shares authorized and outstanding the option shall provide for 150 shares at a total cost of $225,000. The President of CAVE shall exercise his best efforts to make available up to 90 additional shares, or a total of 40 percent, under the same terms should Overseas so desire. In any event it is understood and agreed he shall not relinquish

his personal holdings below 51 percent. Should Overseas exercise its option, it is agreed that the tangible assets and liabilities then held by CAVE will be segregated and set aside so as to be excluded from participation by the stock interest thus conveyed to Overseas.

B) Maintain arrangements for traffic and landing rights, assist in the negotiations of Government contracts, take such actions as may be necessary in connection with continuing the franchise concerned and furthering diplomatic relations of consequence thereto.

C) Delegate to Overseas primary responsibility for the hiring, management and termination of all personnel but with the right reserved to CAVE to make final overriding decision when deemed in the best interest of the Company.

3) It is mutually agreed that:

A) The operation concerned shall be activated as soon as possible and in any event not later than 15 August 1951.

B) Matters of policy and questions of major concern relating to the conduct of the operation will be determined and carried out in accordance with properly adopted decisions of the Board of Directors of CAVE.

C) The system of accounting shall be established by a qualified accounting firm, the books shall be continuously open to both CAVE and Overseas and customary periodic statements and balance sheets shall be issued as certified to by a mutually acceptable Certified Public Accountant.

D) No indirect compensation, rebates or "kick-backs" will be accepted by CAVE or Overseas or any of the personnel connected directly or indirectly with either.

E) All references to money refer to United States currency. Payment may in any case be made in Venezuelan currency based upon the then existing legal rate of exchange.

F) No assignment of this agreement, or any rights thereunder, by either party shall be valid without the written consent of the other.

G) This agreement shall continue in force and govern all transactions between the parties hereto for a period of one year from the date hereof. It shall be renewable upon the mutual agreement of both parties.

H) The validity and interpretation of this agreement shall be governed by the law of the District of Columbia.

Date: 28 July 1951

COMPANIA AEREA VIAJES EXPRESOS
By JORGE MARCANO
Jorge Marcano, President

Date: 25 July 1951

UNITED STATES OVERSEAS AIRLINES, INC.
By RALPH COX, JR.
Ralph Cox, Jr., President

APPENDIX No. 1 TO CAVE—UNITED STATES OVERSEAS AIRLINES, INC. AGREEMENT OF 25, JULY, 1951.

United States Overseas Airlines, Inc., as referred to and wherever referred to in this agreement shall include and be binding upon Ocean Air Tradeways, a co-partnership, as though the references in each instance specifically referred to in and included such co-partnership.

Dated 25, July 1951

UNITED STATES OVERSEAS AIRLINES, INC.
by: RALPH COX, JR.
Ralph Cox, Jr., President

Dated 25, July, 1951

OCEAN AIR TRADEWAYS
by: RALPH COX, JR.
Ralph Cox, Jr., Principal Partner

Dated 28, July, 1951

COMPANIA AEREA VIAJES EXPRESOS DE VENEZUELA S.A.
by: JORGE MARCANO
Jorge Marcano, President

August 3, 1951

It is understood that contract dated July 25, 1951, between U.S.O.A. and C.A.V.E. shall be rewritten to the extent that paragraph numbered 2-C is omitted and paragraph 2-D is renumbered 2-C.

Said contract will then be immediately filed under Section 412 of the Civil Aeronautics Act. Pending action a board of arbitration consisting of Ralph Cox, Jr., Jorge Marcano and a member mutually acceptable to each will be established to settle any disagreements that may arise in connection with the operation of A.V.E.

Upon approval of said 412 application, an application will be filed with the Civil Aeronautics Board requesting approval of Ralph Cox, Jr. or a nominee to serve as a director and a vice president of C.A.V.E. Should approval be denied, the aforementioned board of arbitration will continue in effect for the duration of said contract.

AGREED:

RALPH COX, JR.
JOHN MARSHALL, Attorney in fact
C.A.V.E.

Appendix B

TRANSLATION

BETWEEN the Federal Executive of the United States of Venezuela, represented by the citizen Lt. Col. Oscar Mazzei, Minister of Communications, duly authorized by the Junta Militar of the Government and with the approval of the Cabinet, as one party, and as to the other party, the citizen Jesus Salazar, of age, resident of this city, in his capacity of Manager of CAVE (herein called "The Contractor"), have entered into the contract contained in the following clauses:

FIRST: The Federal Executive authorizes The Contractor to exploit in the country, in accordance with the present contract and subject to the Law of Civil Aviation and its regulations and subject to the other applicable laws and regulations, and without prejudice to third parties, a public aviation transportation company for the transport of passengers and cargo and for flights for advertising, sanitary, agricultural and scientific purposes, and to perform all kinds of civil and commercial acts related to the purposes above mentioned, only through the express [non-scheduled] flights. Upon application and justification by The Contractor for the need of the service, the Federal Executive may authorize scheduled flights in certain and determined regions of the country.

SECOND: The duration of the contract will be for one year from its date, to be extended at the option of the Federal Executive, The Contractor being obliged to accomplish regularly the flights which it has undertaken, and it being understood that if six months elapses without activity by The Contractor, this contract will be rescinded automatically.

THIRD: During the term of the contract the aircraft in the service of the company and owned by the company will pay in the civil airports the respective charges for their use and the use of their installations.

FOURTH: In addition to the rights and privileges accorded the Federal Executive and Government aircraft, aircraft belonging to companies created by the Federal Government, be they autonomous entities or otherwise, and belonging to mixed companies, created in accordance with Paragraph 2 of Article 84 of the Law of Civil Aviation, will have the right during the life of this contract to the friendly use of the airports owned, administered or enjoyed by The Contractor or his company, and also to the lighting service, radio-telegraph, radio-telephone and meteorology of the same.

FIFTH: The employees of the company must be Venezuelans; the administrative personnel at least 75% Venezuelan; the technical personnel at least 50% Venezuelan. When it is impossible for the company to comply with these requisites by reason of scarcity of Venezuelan technical personnel, the Federal Executive may reduce the Venezuelan percentage in a duly proven case.

SIXTH: The Contractor agrees to use in its activities, for training purposes, in accordance with the specialties and with the compensation established by The Contractor and on the conditions and periods to be determined by the Ministry of Communications, with due consideration to the ordinary possibilities of the company, Venezuelans who have finished their studies as pilots, mechanics or air radio operators.

SEVENTH: All of The Contractor's aircraft must carry a duly qualified Venezuelan co-pilot.

EIGHTH: The Federal Executive will exempt The Contractor during the one year life of this contract from 75% of the custom duties on importations relating to the flight material and other products that it imports through the ports and airports of the country, for the exclusive use of the company and in accordance with its ordinary activities, such as instruments, tools, paints and varnishes, up to a total of 1,000 kilograms per year, hanger equipment and spares for airplanes, and motors, radio communication equipment, aircraft engines and material destined for their manufacture, fuel and lubricants and machine shop machinery, the above items being examples but not a limitation, provided The Contractor complies with the laws and regulations on this matter. To understand that this exemption is applicable only on material and tools which are not regularly produced or manufactured in country.

NINTH: The Contractor will grant to the Federal Executive, for passengers and cargo transported for the account of the Federal Public Administration, either of the Executive departments or of institutes and autonomous organizations or any other branches or national services a discount of not less than 15% of the price established by the respective tariffs. The same discount will be granted to the Governments of the States of the Union of the Federal District and of the Federal Territory. Similarly, The Contractor will, if entrusted with the transportation of mail, transport free of charge up to 6 kilograms of official mail on each trip.

TENTH: In the event the company decides and is able to extend its services outside Venezuelan jurisdiction, it will obtain previous authorization of the Federal Executive.

ELEVENTH: In addition to the advantages given by The Contractor to the Federal Government and its branches as

per clause NINTH, The Contractor will give preference in its services to transportation requested by the Public Administration up to 50% of the capacity of the plane used on the respective routes.

TWELFTH: The company will not be charged with national taxes that may affect it in a special way, but will be subjected to payment of all the taxes, contributions and services of general nature with the exception of the exemptions granted in this contract.

THIRTEENTH: The Contractor may transfer the rights and obligations arising under this contract, with prior approval of the Ministry of Communications, only to a Venezuelan company whose Directors, capital and shareholders are Venezuelan in a majority of at least 55%. The respective shares will be nominative and in no case will foreign companies or governments participate in the company.

FOURTEENTH: The Federal Executive reserves at all times by means which it judges proper, the right to inspect and control the destination and use of the materials and objects which, in accordance with clause EIGHTH, are imported free of duties, and the company agrees to keep a registry, also subject to the inspection and control mentioned, on which will be specifically shown the entries and discharges.

FIFTEENTH: So as to insure the Federal Executive against any damage or harm which the company may incur during its activities, and without excluding major responsibilities, The Contractor will post a bond in the name of the Minister of Communications in this city to the amount of 30,000 bolivars.

SIXTEENTH: Finally, and in order specially to insure the Federal Executive of strict compliance with the obligations arising under this contract and without excluding major responsibilities, The Contractor will post bond to the satisfaction of the Federal Government in this city to the amount of 20,000 bolivars.

SEVENTEENTH: Doubts or controversies of any nature which may arise under this contract and which cannot be solved in friendly fashion by the contractors, will be determined by the corresponding tribunals of Venezuela, in accordance with its laws and without giving rise to any foreign claims.

EIGHTEENTH: The Federal Executive will notify the National Congress of this contract. As agreed, we sign in duplicate in Caracas, July 31, 1950.

Sgd. Oscar Mazzei
TTE. CNEL. OSCAR MAZZEI
MINISTRO DE COMUNICACIONES

Sgd. Jesus Salazar
JESUS SALAZAR
Gerente